

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
3 STATESVILLE DIVISION

4 \_\_\_\_\_ )  
5 UNITED STATES OF AMERICA, )  
6 Plaintiff, )  
7 vs. )  
8 LUIS ENRIQUE GARCIA )  
9 Defendant. )  
\_\_\_\_\_ )

5:12-cr-00054-RLV-DSC-1

**ORIGINAL**

10 TRANSCRIPT OF SENTENCING PROCEEDINGS  
11 BEFORE THE HONORABLE RICHARD L. VOORHEES  
12 UNITED STATES DISTRICT COURT JUDGE  
13 MONDAY, DECEMBER 2, 2013

14 APPEARANCES:

15 ON BEHALF OF THE PLAINTIFF:

16 Steven R. Kaufman, Esquire  
17 United States Attorneys Office  
18 227 West Trade Street, Suite 1700  
19 Charlotte, North Carolina 28202  
20 (704) 338-3117  
21 steven.kaufman@usdoj.gov

22 ON BEHALF OF THE DEFENDANT:

23 Charles Linwood Morgan , Jr., Esquire  
24 101 N. McDowell Street, Suite 200  
25 Charlotte, North Carolina 29204  
(704) 334-9669  
atticus1215@yahoo.com

26 ALSO PRESENT

27 JULIA DAVIS, Spanish Interpreter

28 V. Dario Stanziola, CSR (NJ), RPR, CRR

1 MONDAY MORNING, DECEMBER 2, 2013

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3 THE COURT: Is your name Luis Enrique  
4 Garcia.

5 THE DEFENDANT: Yes.

6 THE COURT: Did you come before this  
7 Court in the person of Judge Keesler on  
8 February 4th of this year and plead guilty in  
9 your case?

10 THE DEFENDANT: Yes.

11 THE COURT: Are you pleading guilty to  
12 the charge in Count 1 of the Bill of  
13 Indictment, which is a charge which alleges  
14 conspiracy to distribute and possession with  
15 intent to distribute methamphetamine?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you think you understand  
18 the nature of that charge and the possible  
19 penalties?

20 THE DEFENDANT: Yes.

21 THE COURT: And in connection with this  
22 plea, did you enter into a written agreement,  
23 a written plea agreement between you and the  
24 government?

25 THE DEFENDANT: Yes.

1 THE COURT: Are you fully satisfied with  
2 the services of your attorney in this matter?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you pleading guilty  
5 freely and voluntarily?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that your  
8 plea of guilty and the conviction and sentence  
9 to be imposed in this case could result in  
10 adverse immigration consequences for you in  
11 that, for example, you could be ordered  
12 deported from the United States?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. Do the parties  
15 stipulate to the existence of an independent  
16 basis in fact to support the plea containing  
17 the essential elements of the offense charged?

18 MS. FERRY: Yes, your Honor.

19 MR. MORGAN: Yes, your Honor.

20 THE COURT: Thank you.

21 Given the stipulation, the plea of guilty  
22 and the admissions of the Defendant, the Court  
23 finds there is such a factual basis, reaffirms  
24 its acceptance of the plea and it judges the  
25 Defendant guilty.



1 matter with your attorney, are you able to  
2 tell me without reservation that you have gone  
3 over the presentence report carefully with  
4 your attorney so that you believe you  
5 understand it?

6 THE DEFENDANT: Yes, that's fine.

7 THE COURT: All right. Are there any  
8 outstanding objections, counselor?

9 MR. MORGAN: May it please the Court, we  
10 have made several and only left one to be  
11 argued today. But during the recess the  
12 government and I met with the probation  
13 officer and agreed that the remaining  
14 objection about the gun enhancement would not  
15 be appropriate because the evidence of the gun  
16 predated the dates of the conspiracy and the  
17 government had agreed not to ask for any  
18 relevant conduct type of enhancements. So I  
19 believe that issue has been resolved. And if  
20 your honor accepts that, then there would be  
21 no need to argue any objections.

22 THE COURT: That agreeable with you, Mr.  
23 Kaufman?

24 MR. KAUFMAN: Yes, your Honor, we agree  
25 with Mr. Morgan and don't believe that the

1 two-level enhancement should apply in the  
2 case.

3 THE COURT: All right.

4 MR. MORGAN: If I might continue, that  
5 should reduce the total offense level to a 36  
6 with a guideline range on a criminal history  
7 category of one of 188 to 235 months.

8 MR. KAUFMAN: We agree, your Honor.

9 MR. MORGAN: I believe that's correct.

10 And we'll simply be asking for a sentence  
11 at the low end of the guideline range. And at  
12 the appropriate time, I think Mr. Garcia would  
13 like to say something. I don't mean to jump  
14 the gun here.

15 THE COURT: All right, sir. Excuse me.

16 All right. With that change and that  
17 being the only objection, the Court will adopt  
18 the presentence report for all purposes of  
19 sentencing except as modified.

20 It is reliable and credible and it, as  
21 modified, calculates the offense level at 36,  
22 criminal history Category 1, putting defendant  
23 at a 188 to 235-month guideline custody range.

24 Will there be any motion for departure by  
25 the government.

1 MR. KAUFMAN: No, your Honor.

2 THE COURT: You may be heard, Mr. Morgan.

3 MR. MORGAN: Thank you, your Honor.

4 Other than asking for a sentence at the  
5 low end of the guideline range and designation  
6 as close to home. He has two children that  
7 live in the Watauga County area.

8 He has asked me to point out to the  
9 Court, in addition to what's contained -- or  
10 in support of what's contained in the  
11 presentence report about his working history,  
12 I have a letter that he's just given me from  
13 Wright Brothers Construction Company in --  
14 looks like they're base in Charleston,  
15 Tennessee confirming his employment in 2000  
16 and 2001.

17 THE COURT: All right, sir.

18 Would you care to say anything to the  
19 Court, sir?

20 THE DEFENDANT: Well, most of all, I just  
21 want to apologize for my offense. And I feel  
22 very sorry. And it's fine with what has been  
23 done because I feel that I am guilty. And I  
24 agree to what's happening. But I feel sorry  
25 for my family that's staying here. I have two

1 children, ten and 15. And the mother of my  
2 children, who's not healthy bodily. But I am  
3 aware that I committed an offense by doing  
4 this. And I apologize. But everything that's  
5 happened is all right. I'm sorry.

6 THE COURT: All right. Thank you.

7 We'll hear from the government.

8 MR. KAUFMAN: Thank you, your Honor.

9 Consistent with the plea agreement the  
10 parties have agreed that a guideline sentence  
11 that's appropriate in this case. Mr. Garcia  
12 was involved in a -- approximately a four-year  
13 methamphetamine trafficking conspiracy  
14 responsible for well in excess of one and a  
15 half kilograms of methamphetamine.

16 That said, he did plead guilty, took  
17 responsibility for his actions. And I do  
18 believe that the low end of the guidelines of  
19 188 months is sufficient, but not greater than  
20 necessary.

21 THE COURT: All right. Thank you.

22 Anything further then before the Court  
23 states the sentence?

24 MR. MORGAN: Not from the Defendant.

25 THE COURT: Okay. The Court is persuaded



23           The Court has gone over the Defendant's  
24   sentencing memorandum, which it dealt with the  
25   objection, which has already been sustained

1 with the agreement of the government.

2 So pursuant to the Sentencing Reform Act  
3 of 1984, the Booker case and 18 U.S. Code 3553  
4 (a), Defendant is committed to custody for a  
5 term of 188 months. He'll be required to  
6 support his dependents from prison earnings  
7 while incarcerated.

8 The Court recommends he be allowed to  
9 participate in any educational and vocational  
10 opportunities available to him while  
11 incarcerated.

12 Upon release from imprisonment he'll be  
13 on supervised release for a term of five  
14 years. In accordance with established  
15 procedures provided by the Immigration and  
16 Naturalization Act 8 U.S. Code 1101 and  
17 following sections, Defendant upon release  
18 from imprisonment is be surrendered to a duly  
19 authorized immigration official for  
20 deportation. As a condition of supervised  
21 release, if ordered deported, he shall remain  
22 outside the United States.

23 Should deportation not occur, he shall  
24 report in person within 72 hours of release  
25 from custody of the Bureau of Prisons or the

1 Immigration and Customs Enforcement Agency to  
2 the Probation Office in the district to which  
3 he is released.

4 As a further condition of supervised  
5 release, he shall abide by all orders and  
6 directives of United States Immigration  
7 officials.

8 While on supervised release he shall not  
9 commit another federal, state or local crime,  
10 shall comply with the standard conditions  
11 adopted by this Court.

12 He shall pay the United States a special  
13 assessment of \$100. He does not have the  
14 ability to pay a fine or interest, the Court  
15 having considered the factors from 18 U.S.  
16 Code 3572 (a), so those items are waived.

17 The defendant has requested that he be  
18 placed in a facility as close as possible to  
19 his home, which I believe he said was Catawba  
20 County?

21 MR. MORGAN: Watauga, yes, sir.

22 THE COURT: Watauga County.

23 MR. MORGAN: Correct.

24 THE COURT: And the Court will make that  
25 recommendation.

1 MR. MORGAN: Thank you, your Honor.

2 THE COURT: Will the government be  
3 dismissing Count 2?

4 MR. KAUFMAN: Yes, your Honor, we so  
5 move.

6 THE COURT: Let be it be dismissed.

7 The -- or the consent order and judgment  
8 of forfeiture filed on February 2nd -- excuse  
9 me, February 4th, 2013 will be incorporated  
10 into the judgment.

11 You have a right to appeal, Mr. Garcia.  
12 To do that you would have to give a written  
13 notice of your wish to appeal to the clerk of  
14 this court within 14 days after the Court  
15 files its sentencing judgment resulting from  
16 today's hearing.

17 You may appeal without prepayment of  
18 costs since you have been found to be  
19 indigent.

20 Your attorney or the Clerk of Court would  
21 fill out a Notice of Appeal for you if you  
22 should ask one of them to do that.

23 If you gave up certain appeal rights by  
24 way of your plea agreement, you should discuss  
25 that with your attorney as it might affect

1 your decision on whether or not to not to file  
2 a direct appeal or any appeal.

3 Anything further?

4 MR. KAUFMAN: No, your Honor.

5 MR. MORGAN: No, your Honor. Thank you.

6 THE COURT: All right. Thank you all.

7 Sentence is imposed as stated.

8 (TIME NOTED: 12:07 p.m.)

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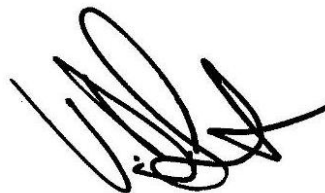
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1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER  
4  
5  
6

7 I certify that the foregoing transcript  
8 is a true and correct transcript from the record of  
9 proceedings in the above-entitled matter.  
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14 Dated this 14th day of February 2014.  
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22 V. DARIO STANZIOLA, CSR, RPR, CRR  
23 Notary Public No. 20011200120  
24  
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